

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

JOSE RAMON MARTINEZ,

Defendant,

vs.

UNITED STATES of AMERICA,

Plaintiff.

CIVIL NO. 04-4159

CRIMINAL NO. 00-40093

ORDER

FOREMAN, District Judge:

Before the Court is motion for leave to appeal *in forma pauperis*, (Doc. 27), and application for certificate of appealability, (Doc. 30), of this Court’s Order denying defendant’s motion under 28 U.S.C. § 2255 (Docs. 23,24). Pursuant to 28 U.S.C. § 2253, a certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.”

Defendant's motion for issuance of a certificate of appealability states that this Court erred when it dismissed his 28 U.S.C. § 2255 motion. The Court, in its order dismissing the § 2255 motion, found that defendant did not meet the requirements of showing that he was denied effective assistance of counsel and that his criminal history calculation was correct (Doc. 23). Nothing in the defendant's application convinces the Court that its ruling was incorrect, or that its findings are debatable among jurists, or that defendant has made a substantial showing of the denial of a constitutional right. Accordingly, defendant's application for certificate of appealability, (Doc. 30), is **DENIED**. In addition, the partial-payment requirements of the PLRA do not apply to appeals from orders denying Section 2255

relief. *See Walker v. O'Brien*, 216 F.3d 626, 628-29 (7th Cir. 2000); *Longbehn v. United States*, 169 F.3d 1082, 1083 (7th Cir. 1999). Accordingly, defendant's motion to proceed *in forma pauperis* (Doc. 27) is **DENIED**.

IT IS SO ORDERED.

DATED: February 15, 2006.

s/ James L. Foreman

DISTRICT JUDGE